

601020  
32860

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-220146.2 **DATE:** November 25, 1985  
**MATTER OF:** Organization Systems Incorporated--  
Reconsideration

**DIGEST:**

Under Bid Protest Regulations, protest based on information provided to protester at debriefing must be filed within 10 working days of the debriefing. Protester's apparent belief that agency had agreed after debriefing to permit protester to file a detailed protest within 30 days after receiving information requested under the Freedom of Information Act does not excuse the protester from compliance with GAO bid protest timeliness requirements. Bid Protest Regulations provide objective criteria to be applied to all protests filed with GAO and may not be waived by actions or representations of a contracting officer.

Organization Systems Incorporated (OSI) requests reconsideration of our decision, Organization Systems Incorporated, B-220146, Oct. 31, 1985, 85-2 C.P.D. ¶ \_\_\_\_\_. In that decision, we dismissed as untimely OSI's protest against the award of a contract for communications skills training courses to Behavioral Research Incorporated (BRI) under request for proposals (RFP) No. M00027-85-R-0027 issued by the United States Marine Corps (USMC).

We found that OSI's protest allegations that the technical evaluation board's (TEB) scoring of its technical proposal was incorrect, that the TEB was prejudiced against OSI and that the TEB improperly downgraded OSI's proposal on the basis of factors not identified in the RFP were based entirely on information which it obtained at its debriefing on July 2, 1985, and not, as OSI alleged, from information received under its Freedom of Information Act (FOIA) request on August 26, 1985. Thus, we concluded that OSI's protest of these issues filed with GAO on August 30, 1985, more than 10 working days after it knew its basis of protest regarding the technical evaluation of OSI's proposal (July 2) was untimely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985).

033875

We also concluded that OSI's other protest allegations based on BRI's proposal were untimely. OSI asserted that BRI's proposal contained misrepresentations of BRI's qualifications to perform the work and that BRI's proposal did not describe accurately OSI's performance as the incumbent under the prior contract which OSI asserts prejudiced the TEB against OSI. However, the record showed that OSI received the BRI technical proposal on August 1, 1985, and did not initially protest the issues raised by BRI's proposal with the agency until, at the earliest, August 19, 1985. Since the apparent protest to the agency was filed more than 10 working days after OSI knew its basis of protest, we concluded that the protest was not filed timely with the agency. 4 C.F.R. § 21.2(a)(2) supra. Also, we pointed out that where the initial protest is filed untimely with the contracting agency, the subsequent protest to GAO could not be considered. See Emery Worldwide, B-218440, May 24, 1985, 85-1 C.P.D. ¶ 603.

OSI refers to its letter of July 2, filed after the debriefing, to the USMC in which OSI stated it would file a detailed protest within 30 days after receiving all information requested under the FOIA. OSI states that USMC did not object to this request and, thus, it reasonably believed the 30-day discovery period was acceptable. OSI states that if this request was not acceptable, USMC had a responsibility to inform OSI. Under these circumstances, OSI believed that it could delay filing a protest until it received and considered the FOIA information. OSI points out it filed its protest within 3 days of USMC's final response to OSI's FOIA request.

As we noted above, we found that OSI's protest against the technical evaluation of OSI's proposal was based entirely on the debriefing of July 2, 1985. Thus, under our Bid Protest Regulations, OSI was required to file its protest within 10 working days of that date.

OSI's apparent belief that the agency approved the requested delay for filing the protest does not excuse OSI from compliance with our bid protest timeliness requirements. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55. We have stated that our Bid Protest Regulations provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a procuring agency. See Evans, Inc.--Request for Reconsideration, B-213289.3, Feb. 27, 1984, 84-1 C.P.D. 240; Glatzer Industries

Corp.--Reconsideration, B-209440.2, Mar. 1, 1983, 83-1 C.P.D. ¶ 211. Furthermore, our regulations have been published in the Federal Register and the protester is charged with constructive knowledge of our filing requirements. Shannon County Gas--Reconsideration, 64 Comp. Gen. 450 (1985), 85-1 C.P.D. ¶ 384.

We affirm our dismissal of the protest.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel